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D.T.E. 99-114

Petition of Fitchburg Gas and Electric Light Company for Approval to Defer Costs Related to the Implementation of Competition in Natural Gas Markets.

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I. INTRODUCTION

On December 29, 1999, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed a petition ("Petition") with the Department of Telecommunications and Energy ("Department") requesting approval to defer expenses[1] associated with the implementation of competition in natural gas local distribution markets other than those expenses associated with the Massachusetts Gas Unbundling Collaborative ("Collaborative").[2] The Company requested deferral of the expenses until the Department determines the appropriate ratemaking treatment in the Company's next general rate proceeding (Petition at 4).[3]

On June 15, 2000, pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention in this proceeding. On June 27, 2000, Bay State Gas Company filed a petition requesting limited participant status pursuant to 220 C.M.R. § 1.03. On June 30, 2000, Commonwealth Gas Company also filed a petition seeking limited participant status. All petitions were granted. A public hearing was

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1 In its Petition, Fitchburg estimated that its non-Collaborative unbundling expenses would be $770,500. Petition at 1. During the proceeding, the Company reported that the amount incurred to date was $237,436 (Exh. AG-1-1).

2 While the Department has approved the recovery of unbundling costs associated with the Company's actual participation in the Collaborative through the local distribution adjustment clause, we declined to permit recovery of non-Collaborative unbundling costs through the local distribution adjustment clause, stating that the Company was free to petition the Department for recovery of these costs in a separate proceeding. Fitchburg Gas and Electric Light Company, D.T.E. 98-51-B at 7 (1999).

3 Approving deferral of an expense allows a company to request recovery for that expense in the company's next rate case even though that expense was incurred before the test year chosen by the company.

held on July 10, 2000.

Fitchburg submitted its initial brief on September 8, 2000, and the Attorney General submitted his initial brief on September 11, 2000. The Company submitted a reply brief on September 15, 2000.[4]

II. POSITIONS OF THE PARTIES

A. The Company

Fitchburg argues that the development of the competitive natural gas market has required it to incur restructuring costs (Company Initial Brief at 6). Fitchburg claims that the costs it seeks to defer are directly related to reformulating the Company's gas division operations to allow new suppliers to sell directly to Fitchburg's natural gas customers (id. at 10). Fitchburg states that it is not seeking recovery of the costs in this proceeding, but merely is preserving the opportunity to recover the costs in a future rate proceeding (id. at 8).

The Company argues that the costs at issue are sufficiently significant to warrant a rate case filing (id. at 9). The Company states that, not only are the costs at issue extraordinary in amount (approximately $250,000 to date), they are also extraordinary in nature (id. at 9-10). Although the Company has been incurring these costs since 1997, Fitchburg states that these costs are nonrecurring since there will be no need to incur additional costs once the reformulation of the Company's gas division is complete (id.). Fitchburg argues that its

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[4] The Attorney General did not file a reply brief.

request is consistent with Department precedent due to the infrequency of both its rate increases and deferral requests (id. at 7).

The Company argues that the costs at issue were incurred in compliance with Department Orders and directives concerning competition in the gas industry (Company Reply Brief at 3-4). The Company notes that it previously attempted to recover these costs through the local distribution adjustment clause ("LDAC") in 1998 (id. at 3).[5] Fitchburg explains that the reason the amount of expenses it now seeks to defer is lower than the amount it initially requested is because its original estimates included the total cost to implement competition from start to finish (id. at 5).

In further support of its request, the Company claims that its ability to choose a test year has been restricted by the Department's generic performance based ratemaking proceeding in Service Quality, D.T.E. 99-84 (Company Initial Brief at 8). The Company also claims that it has been unable to earn the return permitted under its established rates in D.T.E. 98-51 (id. at 8).

B. Attorney General

The Attorney General states that, in order to defer an expense, a utility must demonstrate that the expense would be recoverable as an extraordinary expense had it been incurred during the test year used in a rate case (Attorney General Brief at 3, citing Boston Gas

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[5] In Fitchburg Gas and Electric Light Company, D.T.E. 98-51-B (1999), the Department rejected the recovery of unbundling related costs through the LDAC and stated that the Company may petition the Department for recovery of these costs in a separate proceeding. Id. at 7.

Company, D.P.U. 89-177, at 6 (1989)). The Attorney General argues that the costs at issue fail to meet the Department's standard of review for deferrals because they were incurred over a period of three years between 1997 and 1999 (id. citing Exh. AG-1-1).[6] Therefore, the Attorney General claims that the 1997 and 1998 costs do not fall within the 1999 test year (id.). With regard to the amount of the expenses, the Attorney General states the Company's actual expenses are significantly less than the approximate $770,500 deferral amount requested by the Company in its Petition (id. citing Exh. AG-1-1). The Attorney General argues that the expenses are not extraordinary in nature and requests that the Department reject the Company's Petition (id. at 3-4).

III. STANDARD OF REVIEW

The Department formulated its standard for reviewing requests for deferral accounting treatment in North Attleboro Gas Company, D.P.U. 93-229 (1994). In that case, the Department stated that a utility seeking deferral treatment must demonstrate prima facia in its petition that: (1) based on Department precedent, the annual expense[7] may be recoverable as an extraordinary expense if it were incurred during a test year; (2) a Department denial of the request for deferral would significantly harm the overall financial condition of the company; and (3) the Department's denial of the request for deferral is likely to cause the filing of a rate case that would include in its test year the expense for which deferral is sought. Id. at 7.

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[6] The Attorney General's brief did not address the Company's non-Collaborative expenses incurred in 2000.

[7] For example, the company's request for deferral would be evaluated in terms of what would constitute an annualized amount. North Attleboro Gas Company, D.P.U. 93-229, at 7 n.9.

The Department's review of a complete petition must strike a balance between, on the one hand, historical ratemaking principles which employ the test year method to determine a representative level of expenses and, on the other hand, the interest in administrative efficiency which might be achieved by avoiding single-issue rate cases, or rate cases precipitated by an extraordinary expense which may be recoverable if incurred in a test year. Thus, once a prima facia showing is made, the Department will evaluate the petition, considering such additional factors as: (a) the company's ability to choose a test year; (b) the company's history and frequency of rate increases; (c) the company's frequency of requests for deferral; (d) the company's earnings in the year the subject expense was incurred; and (e) whether some voluntary agreement on the part of the petitioner (e.g., a settlement) would otherwise preclude bringing a G.L. c. 164, § 94 petition during the period for which deferral is sought. Id. at 7-8. Granting a deferral pursuant to this standard would not constitute a guarantee that the subject expense would be recoverable in a future rate case. Rather, subsequent ratemaking treatment of the expense would be considered in the company's next rate case. Id. at 8.

IV. ANALYSIS AND FINDINGS

The Company seeks to defer $237,436 in non-Collaborative unbundling costs incurred between 1997 and 2000, representing $170,130 in service company charges and $67,306 in outside services (Exh. AG-1-1). Although the Attorney General argues that the costs fail to satisfy the Department's criteria for deferral because they were incurred over a period of several years, the multi-year period of time over which the expenditures have been incurred is not, in and of itself, a barrier to a deferral request. See D.P.U. 93-229, at 7 n.9;

Massachusetts-American Water Company/Salisbury Water Supply Company, D.P.U. 92-239/240, Letter Order at 3 (March 30, 1993); Colonial Gas Company, D.P.U. 89-70, at 4-8 (1989) (deferred accounting approval for expenditures incurred over a five-year period). Here, the expenses incurred by Fitchburg outside of its collaborative participation occurred over a four-year period.[8] The North Attleboro standard does not restrict deferrals to expenses that occur in a single year. The Company's request for deferral must be evaluated in terms of what would constitute an annualized amount. North Attleboro Gas Company, D.P.U. 93-229, at 7 n.9. In view of the four-year period during which Fitchburg has incurred non-collaborative unbundling costs, as well as the variability of these costs from year-to-year, an appropriate annualized amount is a weighted annual average cost. Using a weighted average approach,[9] the representative annualized amount is $95,713.

Once an annual expense is established, we must next determine whether, according to Department precedent, the expense may be recoverable as a nonrecurring expense if it were incurred during a test year. D.P.U. 93-229, at 7 (1994). The unbundling expenses for which deferral is being sought consist of modifications to the Company's accounting and billing

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8 Fitchburg's non-Collaborative unbundling costs from 1997 through 2000 are broken down as $3,604 in 1997, $50,249 in 1998, $132,635 in 1999, and $50,947 in 2000 (Exh. AG 1-1).

9 To develop this weighted average, the Department divided the total costs for each year by the total non-Collaborative unbundling costs of $237,436, to derive a percentage factor applicable to each year. These percentage factors were then multiplied by their corresponding costs to derive a weighted cost for that year. The sum of these weighted costs for the years 1997 through 2000 results in a weighted average annual expense level. This approach derives an annualized amount that casts the Company's request in the most favorable light.

systems, development and implementation of supplier information, capacity assignment, and customer education systems, providing daily load profiles for customers without daily metering, and the creation of new systems for daily and monthly balancing and cash-outs related to the unbundling of gas service as part of the transition to a competitive market (Exhs. DTE-1-1; AG-1-5). Based upon the nature of the expenses at issue (i.e., costs incurred for a one-time transition in the natural gas industry), the Company's non-Collaborative unbundling costs represent a nonrecurring expense.

Nonrecurring expenses incurred in the test year are ineligible for inclusion in the cost of service unless it is demonstrated that they are so extraordinary in nature and amount as to warrant their collection by amortizing them over a period of time. Fitchburg Gas and Electric Light Company, D.P.U. 1270/1414, at 33 (1983). In 1999, Fitchburg had a net gas operating income[10] of $1,586,096 on gas revenues of $18,116,479 (Exh. DTE-1-3 Supp.). Although the Company's non-Collaborative unbundling costs represent an expense, the annualized level of costs of $95,713 does not represent an extraordinary amount meeting the standard for deferring such costs. In view of the Company's gas revenues of $18,116,479 and net gas operating income of $1,586,096, the Department finds that the $95,713 in annualized non-Collaborative unbundling costs are not extraordinary in nature or amount.

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[10] Operating income consists of income after expenses, depreciation, and taxes, but does not include interest expense as a deduction (Exh. AG-1-2 (1999 Annual Return to the Department) at 10).

Because the Company's non-Collaborative unbundling costs are not extraordinary in nature or amount, Fitchburg's request fails to satisfy the first part of the North Attleboro standard. Moreover, in view of the level of annualized amount of non-Collaborative unbundling costs at issue, the Department concludes that a denial of the request would neither significantly harm the overall financial condition of the Company, or in itself trigger the filing of a rate case by Fitchburg. Therefore, the Department finds that the Company's petition fails to meet the requirements of the North Attleboro standard. Accordingly, the Company's deferral request is denied.

V. ORDER

Accordingly, after notice, hearing, and consideration, it is

ORDERED: That the petition of Fitchburg Gas and Electric Light Company for approval of deferral accounting treatment related to the implementation of competition in natural gas markets is DENIED.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr. Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).